CF0000062787

(2)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR (M.P.)

Criminal Appeal No. 1379/1999

Ramsharan, aged about 47 years
s/o Jiwrakhan Lal R/o Village
Patgawan P.S. Pendra District
Bilaspur (M.P.) ..... Appellant
(in jail)

Vs.

State of M.P. through
P.S. Pendra Distt.
Bilaspur (M.P.) ..... Respondent

Division Bench (Criminal)

(7318)

M. Ahmad

M.A.P.

CONVICTION
U/S 302 IPC
SENTENCE
RIGOROUS IMPRISONMENT FOR LIFE
AND FINE OF RS 1000/-

APPEAL UNDER SECTION 374 OF CODE OF CRIMINAL PROCEDURE

XI-HC-78

(19)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.R.-1374/99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench:

Hon. Shri L.C. Bhadoo &
Hon. Shri Dhirendra Mishra, JJ

Appellant : Ramsharan

Versus

Respondent : State of M.P. (now Chhattisgarh)

Shri B.D. Badgaiyan counsel for the appellant.

Shri D.K. Gwalare, Dy. GA for the respondent/State.

26.2.2007:

(ORAL JUDGMENT DICTATED ON DAIS)

Dhirendra Mishra, J

This appeal under Section 374(2) of the Code of Criminal Procedure preferred by the accused/appellant is directed against the judgment of conviction and order of sentence dated 23.4.1999 passed by Additional Sessions Judge, Link Court, Pendra in Sessions Trial No. 235/1998 whereby the accused/appellant has been held guilty under Section 302 of the IPC for committing the murder of deceased Shiv Kumar, and sentenced to undergo imprisonment for life and pay fine of Rs. 1000/-, in default of payment of fine to further undergo RI for one year.

3. Case of the prosecution as mentioned in the FIR Ex. P-23 is that deceased Shiv Kumar lodged a report on 6.4.1998 in police station Pendra Road mentioning therein that he and the accused/appellant are working in a

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	horticulture garden. He had made a complainant against the accused/appellant that he creates nuisance after consuming liquor and for this reason, the accused/appellant nourishes envy. On 6.4.1998, Ramsaran had not come on duty in the day time, however, he came inside the garden at about 4.30 p.m. holding lathi in his hand and started abusing him which was complained by him to the Garden in-charge namely Kamal Kumar. When he proceeded to his house, Ramsaran again abused him and challenged to see him after he comes out of the garden. Meanwhile, in-charge of the garden Kamal Kumar came and stopped the accused/appellant from abusing. However, as the complainant came out of the garden, accused/appellant tried to assault him by Lathi but said Kamal Kumar snatched it from the accused/appellant. Thereafter, accused took out the dagger which he had concealed against his back inside the vest (Baniyan) and assaulted him on the left side of his head as a result of which blood started oozing. On the basis of this report, firstly the offence was registered under Section 307 of the IPC, however, the injured succumbed to the injuries sustained by him on 11.4.1998 while undergoing treatment in Government Hospital, Bilaspur and the offence was converted under section 302 of the IPC. Inquest of Ex. P-17 was prepared in the presence of witnesses, body was sent for autopsy vide Ex. P-18 to Government Hospital, Bilaspur where Dr. K.K. Shukla PW-5 conducted the post mortem examination and submitted his report Ex. P-8. During investigation the injured was first sent for medical examination to PHC Pendra vide Ex. P-24 where Dr. R.C. Mishra (PW-8) examined him and referred to S.P. Hospital, Bilaspur for further treatment. M.L.C. report is Ex. P-11. Dr. Mishra recorded the dying declaration of the deceased vide Ex. P-12. After the death of Shiv Kumar merg intimation of Ex. P-15 was	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

recorded. Spot map was prepared by the investigating officer vide Ex. P-19. On the memorandum of the accused Ex. P-8 weapon of offence i.e. dagger was taken into possession vide Ex. P-9. The clothing of the deceased which he was wearing at the time of incident were seized vide Ex. P-5 and they were sent for examination to PHC Pendra vide Ex. P-20. The seized dagger was also sent for examination under Ex. P-21 and the doctor vide report of Ex. P-13 opined that the injuries found on the body of the deceased could have been caused from the sharp edged dagger. The seized articles were also sent for chemical examination to Forensic Science Laboratory, Sagar and the report obtained therefrom is Ex. P-26.

After completing investigation, the charge sheet was filed in the Court of Judicial Magistrate First Class, Pendra who in turn committed the case to the Court of Sessions Judge, Bilaspur from where learned Additional Sessions Judge Pendra, received the same on transfer for trial.

In order to establish the charge against the accused /appellant the prosecution has examined 11 witnesses in all. Statement of the accused was also recorded under section 313 of the Code of Criminal Procedure in which he denied the evidence appearing against him in the prosecution case and pleaded his innocence and false implication in the case. However, the trial Court after hearing counsel for the parties convicted and sentenced the accused as mentioned above.

Homicidal death of Shiv Kumar is not in dispute. Even otherwise from perusal of the evidence of PW-6 Santoshi Nagesh who is an eyewitness to the incident and the evidence of Dr. K.K. Shukla PW-5, who has conducted

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the post mortem examination on the body of the deceased and the post mortem report submitted by him which mentions that there was a stitched wound over left parietal region, skull bone was cut, size of which was 3 x 8 ½ inch bone deep which was extending from parietal region to temporal region, further that the death was homicidal in nature and the injuries were caused by a sharp edged weapon, the homicidal death of the deceased is established.

In order to establish the involvement of the accused/appellant in the crime in question, the prosecution has examined Kamal Kumar Nagesh and Santoshi Nagesh, PW-1 and PW-6 respectively who had witnessed the incident. PW-1 Kamal Kumar Nagesh has resiled from his diary statement and has been declared hostile. However, PW-6 Santoshi Nagesh who is the daughter of the deceased has stated that at the time of incident she was present in her house, which is situated in the garden. At that time, accused Ram Sharan came there abusing on the pretext that his father is making complaint to the officers. Thereafter, he went from there and again returned after 10 minutes, at that time her father was sitting with Kamal Kumar Nagesh. Her father asked him not to abuse and go out, on which he threatened that after going out of the gate he would see him. Her father accepting the challenge went out of the gate along with K.K. Nagesh, the accused was holding Lathi in his hand and he tried to assault her father with lathi which was snatched by K.K. Nagesh. Thereafter, accused took out the dagger which he had concealed against his back under the vest (Banyan) and assaulted her father on the head as a result of which blood was oozing. After assault, accused went towards his house. She along with Chowkidar

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

namely Bhagwandas went to the police station, Pendra on bicycle where her father lodged the report. In the cross examination of this witness, the defence has not been able to elicit anything which either discredits the statement of this witness or makes it untrustworthy. Statement of this witness is corroborated in material particulars by FIR Ex. P-23, which was lodged by deceased himself and the dying declaration Ex. P-12 which was recorded by Dr. R.C. Mishra on the date of incident itself. Statement of this witness is also corroborated by the medico-legal examination reportEx. P-11 as also from the post mortem report Ex. P-8.

Learned counsel for the appellant submits that there is material discrepancy in the version given in FIR and the dying declaration which makes the dying declaration doubtful. He submits that the seized articles were sent for chemical examination and it is evident from the report that seized dagger presence of blood has not been noticed.

On the other hand learned counsel appearing for the respondent supports the impugned judgment of the trial Court.

We have heard counsel for the parties and perused the statement of PW-6 as also the FIR, dying declaration of the deceased , medo-legal report and the post mortem report of the deceased and we are of the considered opinion that the statement of PW-6 Santoshi Nagesh who is an eyewitness to the crime, inspires confidence in which she has categorically stated that accused had come with full preparation to assault her father with dagger. Statement of this witness is also duly corroborated by the prosecution

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	documents such as FIR, dying declaration, post mortem report, Medico-legal report etc. Thus, we do not find any illegality or infirmity in the impugned judgment, which calls for any interference from this Court. The appeal being devoid of substance is liable to be dismissed. It is accordingly dismissed. Sd/- L.C. BHADOO Judge Sd/- DHIRENDRA MISHRA Judge	